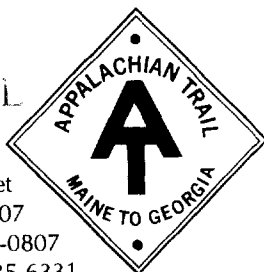


APPALACHIAN TRAIL  
CONFERENCE

799 Washington Street  
P.O. Box 807  
Harpers Ferry, WV 25425-0807  
(304) 535-6331  
Facsimile: (304) 535-2667



DOCKET FILE COPY ORIGINAL

April 13, 1998

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
1919 M Street, NW  
Washington D.C. 20554

**Re: Comments on the Environmental Impact of Possible Preemption of Local Land Use and Zoning Laws Regarding the Siting and Construction of Digital Television and Other Towers, Described in a Notice of Proposed Rule Making (NPRM), FCC Docket No. 97-298 and MM Docket No. 97-182.**

Dear Ms. Salas:

The Appalachian Trail Conference (ATC) sent a letter last October,<sup>1</sup> explaining who we are and why we object to the FCC's proposed preemption of local zoning laws regarding digital television and other broadcast towers. That letter explained that the ATC is a private, non-profit organization of 24,000 members, also representing 31 federated hiking clubs throughout the eastern United States. The ATC works with government agencies, particularly the National Park Service, to manage the Appalachian National Scenic Trail which is a narrow corridor of land under public ownership for all but 32 of its 2,160 miles. The Trail was designated as the nation's first "national scenic trail" in 1968 under the National Trails System Act.<sup>2</sup>

We continue to hope that the FCC will choose to halt this proposed rule making, thereby making the question of an Environmental Impact Statement moot. Commissioner Ness quite properly pointed out earlier this month that the way for broadcasters to expedite the local permitting process is to "be in touch with their municipal authorities early on" in order to "save time later on."<sup>3</sup> Commissioner Ness was entirely correct to say that the FCC's federal-state-local advisory committee can expedite the local permitting process by developing information materials for localities, and that an FCC "strike force" can be made available to help local governments sort through their questions in a reasonable amount of time. Communicating with the

<sup>1</sup>Letter from David N. Startzell, Executive Director, ATC to William E. Kennard, Chairman, FCC dated October 28, 1997.

<sup>2</sup>16 U.S.C. §1241.

<sup>3</sup>Prepared Remarks of Commissioner Susan Ness Before NAB '98, "The Road to DTV" Panel, Las Vegas, Nevada, April 8, 1998.

No. of Copies rec'd  
List A B C D E

024

David B. Field  
*Chair*  
Brian T. Fitzgerald  
*Vice Chair-New England*  
David N. Barr  
*Vice Chair-Mid-Atlantic*  
James Hutchings  
*Vice Chair-Southern*

Arthur P. Foley  
*Treasurer*  
Sara H. Davis  
*Secretary*  
Frank Logue  
*Assistant Secretary*  
David N. Startzell  
*Executive Director*

*New England Region*  
Douglas G. Christie  
Stephen L. Crowe  
Peter S. Jensen  
F. Peter Rentz  
Steven Smith  
Christine D. Wolfe

*Mid-Atlantic Region*  
Robert E. Butt  
Jane G. Daniels  
Paul DeCoste  
Edward F. Kenna  
Eric Olson  
Thyra C. Sperry

*Southern Region*  
Michael D. Brewer  
Theresa A. Duffey  
Michael McCormack  
Marianne Skeen  
Vaughn H. Thomas  
James M. Whitney, Jr.

*Members at Large*  
Ken Honick  
Al Sochard

<www.atconf.org>

localities is the right way to go. Preemption is the wrong way, and in all likelihood preemption would not survive judicial scrutiny.<sup>4</sup>

We now respond to the FCC Public Notice dated March 6 of this year, which solicited comments as to whether a proposed preemption of local planning laws would have a significant environmental effect such that an Environmental Impact Statement (EIS) should be prepared. As explained below, the proposed preemption would indeed have a very significant environmental effect such that an EIS is required, and we ask that the Commission add us to its public notice list, because we would want to submit comments on the draft EIS. An EIS may be required for broad Federal actions such as the adoption of regulations, and this is a case in point.<sup>5</sup>

Ever since the FCC first amended its rules in order to implement the National Environmental Policy Act (NEPA),<sup>6</sup> the FCC has gone to great lengths to emphasize the essential role that local and state governments play in dealing with the environmental consequences of communications facilities. To short circuit that role, as the FCC now proposes to do, would place those environmental interests in great jeopardy. What the FCC said in 1974 remains true today:

Local, State and regional land use authorities . . . are obviously better situated than the Commission — by location, experience, and awareness of local values — to deal with land use questions. . . . Deference will be accorded to their rulings and to their views, particularly in matters of aesthetics and when the record demonstrates that environmental issues have been given full and fair consideration.<sup>7</sup>

The construction of digital television (DTV) towers is a huge undertaking which will have a variety of environmental effects. These towers will in many cases be taller — much taller — than the World Trade Center in New York or the Sears Tower in Chicago.<sup>8</sup> As far as the Appalachian National Scenic Trail is concerned, the environmental effects of a nearby DTV tower would be quite diverse and dramatic.

One of the hallmarks of the Trail is its diversity of wildlife. The National Audubon Society has correctly pointed out that these towers would pose a very significant hazard to the migratory routes of many species of fowl.<sup>9</sup>

Another hallmark of the Trail is its aesthetic value. When the FCC amended its regulations in 1986, it explicitly stated that "we will not automatically require submission of an Environmental Assessment for cases that may raise aesthetic

---

<sup>4</sup>On October 28, 1997, we commented that the preemption appears to conflict with Section 704 of the Telecommunications Act of 1996 and with the Tenth Amendment. In its December 1, 1997, Petition to the FCC, the Audubon Society also asserted that "[t]he proposed rule lacks adequate statutory authority."

<sup>5</sup> 40 C.F.R. §1502.4(b).

<sup>6</sup> 42 U.S.C. §§4321-4347.

<sup>7</sup> FCC 74-1042, In the Matter of Implementation of the National Environmental Policy Act of 1969, Docket No. 19555 (1974), pp. 1328 and 1329.

<sup>8</sup> "New in Your Neighborhood: 2,000-Foot TV Towers" by Mary Margaret Sloan, in *American Hiker*, February 1998, p. 1.

<sup>9</sup> December 1, 1997 Petition of the Audubon Society to the FCC.

concerns."<sup>10</sup> The FCC thus left this type of concern almost completely up to the localities, but now the FCC proposes to deny the localities an adequate period of time to assess aesthetic impacts. To call such a proposal "significant" would be a major understatement, especially considering that NEPA is expressly intended to assure for all Americans "esthetically and culturally pleasing surroundings."<sup>11</sup>

Yet another hallmark of the Appalachian Trail is its natural character. Both NEPA and the National Trails System Act protect "natural" environments,<sup>12</sup> and there is virtually no ambiguity or vagueness about what a "natural" landscape is. A tower 1,000 or 2,000 feet tall would, if constructed at an improper location, significantly affect the "natural" environment of the Appalachian National Scenic Trail. A natural experience is, after all, what millions of people seek every year when they find refuge and recreation along this Trail. To people who cherish a primitive hiking and camping experience, antenna towers and broadcast towers are not just ugly; they are annoying and distracting, in much the same way that high-intensity white lights are annoying and distracting to people in residential areas.<sup>13</sup> The proposed rule making would have the significant environmental effect of virtually eliminating any local protection of the few natural areas remaining in those local communities.

The effects upon wildlife, upon aesthetic values, and upon natural landscapes are the three primary environmental consequences of the FCC's proposed rule making for the Appalachian National Scenic Trail. They are very significant consequences, and it is unthinkable that the FCC would pursue such a course without benefit of an Environmental Impact Statement which would provide an appropriate opportunity to examine all the alternatives to the proposed preemption of local control.

Sincerely,



David N. Startzell  
Executive Director

Four Copies Enclosed

---

<sup>10</sup>In the Matter of Amendment of Environmental Rules in Response to New Regulations Issued by the Council on Environmental Quality, Report and Order, FCC 79-163, 60 R.R. 2d 13, par. 11 (1986).

<sup>11</sup> 42 U.S.C. §4331(b)(2).

<sup>12</sup>NEPA seeks to "preserve important historic, cultural, and **natural** aspects of our national heritage." 42 U.S.C. § 4331(b)(4)(emphasis added). The National Trails Act likewise seeks to provide for the "conservation and enjoyment of the nationally significant scenic, historic, **natural**, or cultural qualities of the areas through which such trails may pass." 16 U.S.C. §1242(a)(2)(emphasis added).

<sup>13</sup>See 47 C.F.R. §1.1307(a)(8).